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# LETTER TO THE EDITOR

## PREMENSTRUAL SYMPTOMS: NO LEGAL DEFENSE†

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A recent article<sup>1</sup> about the potential use of premenstrual syndrome in the courts contains serious inaccuracies. It incorrectly describes the only American criminal case involving a premenstrual syndrome claim and fails entirely to mention the only other reported case in the United States discussing premenstrual syndrome. It also makes two theoretical mistakes: it improperly assumes that a premenstrual "syndrome" exists and that the syndrome may relieve women of criminal liability.

The first reported criminal case in the United States in which a defendant asserted premenstrual syndrome as a defense occurred in the jurisdiction where I serve.<sup>2</sup> In that case a mother was accused of assaulting her four-year-old child with a stick. The defense raised the claim of premenstrual syndrome as one of several grounds for its motion to dismiss in the interests of justice.

In 1982 my office did extensive research on the issue of premenstrual syndrome in preparing the case for trial. We reviewed some 3,000 medical periodicals published since 1971 in English and foreign languages and interviewed gynecologists, psychiatrists and endocrinologists. From this research we learned that there is no single well-defined medical condition which can be

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† The views expressed in this letter do not necessarily represent the views of the St. Thomas More Institute For Legal Research.

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This article was prepared with the assistance of Barbara F. Newman, Chief of the Sex Crimes/Special Victims Bureau, Kings County District Attorney's Office.

<sup>1</sup> Note, *Battered Women's Syndrome and Premenstrual Syndrome: A Comparison Of Their Possible Use As Defenses To Criminal Liability*, 59 ST. JOHN'S L. REV. 558 (1985).

<sup>2</sup> *People v. Santos*, No. 1K046229 (N.Y.C. Crim. Ct. Kings County 1981).

called "premenstrual syndrome."

We also found that there is no scientific evidence for the proposition that the onset of the menstrual cycle provokes aggressive or violent behavior in women. The scientific evidence is confirmed by common sense experience—if women became violent each month our jails would be filled with women. But, as it is, the overwhelming number of jail inmates are men; no menstrual cycle caused their aggression.

The scientific evidence does show, however, that women experience different symptoms in different degrees in connection with their menstrual cycle. The symptoms cited are myriad. Among them are anxiety, irritability and depression. Insanity is not a symptom of the menstrual cycle. And there is no syndrome—"a group of signs and symptoms that occur together and characterize a particular abnormality."<sup>3</sup>

Moreover, research has shown that there is no diminution of the cognitive abilities of women in connection with the menstrual cycle.<sup>4</sup> In a study of this question, fifty women between the ages of thirty and forty-five years old were placed in groups matched by age, education and numbers of their children. The two groups were tested for anxiety, depression and cognition, one group tested premenstrually and the other tested intermenstrually. As to depression and anxiety, the distress of the premenstrual women was comparable to that reported for freshmen college women during orientation and testing. But the study found that the "mood change[s] had no effect on cognitive test performance."<sup>5</sup> These tests "measured sensory-perceptive factors, memory, problem solving, induction, concept formation and creativity."<sup>6</sup>

It is critical to an understanding of the resolution of the *Santos* case in Kings County to view it in light of the principal claim made by the proponents of the premenstrual syndrome defense, namely, that because of premenstrual syndrome the defendant was not responsible for her acts. In particular, premenstrual syndrome proponents assert that as a result of premenstrual syndrome, a defendant, prey to her supposed "illness," lacks the *mens rea* necessary for criminal responsibility. Yet Shirley Santos, the defendant

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<sup>3</sup> WEBSTER NEW COLLEGIATE DICTIONARY 1174 (1973).

<sup>4</sup> Golub, *The Effect of Premenstrual Anxiety and Depression on Cognitive Function*, 34 J. OF PERSONALITY & SOC. PSYCHOLOGY 99 (1976).

<sup>5</sup> *Id.* at 103.

<sup>6</sup> *Id.* at 101.

in the *Santos* case, in her own words in a television interview given several days before she pleaded guilty, explicitly rejected a premenstrual syndrome claim; she bluntly admitted that she did not hit her child because "her period came down."<sup>7</sup> She herself showed her claim of premenstrual syndrome for what it was: hollow and without merit. Moreover, when Mrs. Santos plead guilty to a violation in her case, she specifically admitted responsibility for her actions and withdrew all defenses.<sup>8</sup>

The article mischaracterizes proceedings in the matter before Criminal Court Judge Jerome Becker.<sup>9</sup> Judge Becker did not rule that testimony on the issue of premenstrual syndrome was admissible. Premenstrual syndrome was one of the grounds offered to Judge Becker in a defense motion to dismiss in the interests of justice (a *Clayton* motion). Judge Becker denied this motion to dismiss, but mused orally that "[i]nasmuch as eruptions of the mind are admissible evidence at criminal trials why then should proof of psychological eruption of the body likewise not be admitted?"<sup>10</sup> He also added that this thought was merely "a rhetorical question at this moment."<sup>11</sup>

In a recent Denver, Colorado bankruptcy case<sup>12</sup>—not cited in the article—a defendant sought to have a judgment debt she owed to plaintiff discharged under bankruptcy on the ground that the defendant was suffering from "premenstrual syndrome" when she stabbed the plaintiff, her roommate. In that case, the court decisively rejected the claim of premenstrual syndrome as a way to limit responsibility. The court observed that premenstrual syndrome was not been established either medically or legally as an explanation for improper conduct. It further held, after hearing expert testimony on the issue of premenstrual syndrome, that the expert testimony demonstrated a lack of any general acceptance of premenstrual syndrome in the psychiatric community as an explanation for inappropriate behavior.<sup>13</sup>

Because diagnosis of "premenstrual syndrome" relies solely on information from the presumed sufferer or one who has observed

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<sup>7</sup> Television interview with Shirley Santos (WPIX television broadcast, Oct. 29, 1982).

<sup>8</sup> Minutes, November 3, 1982.

<sup>9</sup> Minutes, April 29, 1982.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Lavato v. Irvin*, 31 Bankr. 251 (Bankr. N.D. Colo. 1983) (mem.).

<sup>13</sup> *Id.* at 257.

her, there is no way of proving its presence scientifically—or disproving its presence. Thus, its diagnosis may be easily feigned. Just as bad, a woman wrongfully charged with having “premenstrual syndrome” would have no medical or scientific way of disproving it. For example, a woman charged with suffering from premenstrual syndrome by her husband seeking custody of their children would have no scientific way of refuting his claim. It is not only in a custody case that a woman may be victimized by a false claim of premenstrual syndrome. What about a wife battering case in which the wife is seriously injured? The husband/batterer could assert that his wife was a premenstrual syndrome sufferer and, in the throes of her illness, became violent with him, causing him to attack and seriously injure her. There would be no medical or scientific way she could refute this claim. Thus, premenstrual syndrome must be viewed as much as a sword to be used against women as a shield to protect them.

The mistaken notion of premenstrual symptoms as a cause of violence by women could seriously undermine women’s progress in the workplace and elsewhere. For example, employers could claim their female employees suffered from premenstrual syndrome, and become violent once a month and therefore fire or refuse to promote them. What an expedient way to end the employment gains women have made.

Certainly, the women who experience discomfort or pain in connection with their menstrual cycle deserve to have these symptoms studied in a serious, scientific way so that the symptoms may be alleviated. For far too long the discomfort, pain, or other symptoms triggered by the onset of the menses have been ignored as medically unimportant or trivial. We need much more research so that women can get the effective help they need.